



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------------------|-------------|-----------------------|---------------------|------------------|
| 09/837,094 | 04/18/2001 | James M. Sheppard JR. | 3129 | 8428 |
| 7590 | 10/15/2004 | | EXAMINER | |
| DOUGHERTY, CLEMENTS & HOFER | | | BEFUMO, JENNA LEIGH | |
| GREGORY N. CLEMENTS | | | ART UNIT | PAPER NUMBER |
| 1901 ROXBOROUGH ROAD | | | | |
| CHARLOTTE, NC 28211 | | | 1771 | |

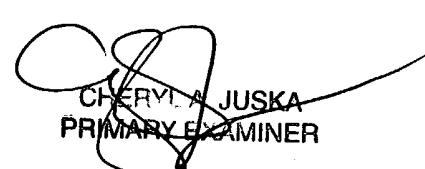
DATE MAILED: 10/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | |
|---|---------------------------------------|---|
| Advisory Action | Application No. 09/837,094 | Applicant(s) SHEPPARD, JAMES M. |
| | Examiner Jenna-Leigh Befumo | Art Unit 1771 |
| <i>--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --</i> | | |
| <p>THE REPLY FILED 01 October 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.</p> | | |
| PERIOD FOR REPLY [check either a) or b)] | | |
| <p>a) <input type="checkbox"/> The period for reply expires _____ months from the mailing date of the final rejection.</p> <p>b) <input checked="" type="checkbox"/> The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).</p> | | |
| <p>Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).</p> | | |
| <p>1. <input type="checkbox"/> A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.</p> | | |
| <p>2. <input type="checkbox"/> The proposed amendment(s) will not be entered because:</p> | | |
| <p>(a) <input type="checkbox"/> they raise new issues that would require further consideration and/or search (see NOTE below);</p> | | |
| <p>(b) <input type="checkbox"/> they raise the issue of new matter (see Note below);</p> | | |
| <p>(c) <input type="checkbox"/> they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or</p> | | |
| <p>(d) <input type="checkbox"/> they present additional claims without canceling a corresponding number of finally rejected claims.</p> | | |
| <p>NOTE: _____.</p> | | |
| <p>3. <input type="checkbox"/> Applicant's reply has overcome the following rejection(s): _____.</p> | | |
| <p>4. <input type="checkbox"/> Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).</p> | | |
| <p>5. <input checked="" type="checkbox"/> The a)<input type="checkbox"/> affidavit, b)<input type="checkbox"/> exhibit, or c)<input checked="" type="checkbox"/> request for reconsideration has been considered but does NOT place the application in condition for allowance because: <u>See Continuation Sheet</u>.</p> | | |
| <p>6. <input type="checkbox"/> The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.</p> | | |
| <p>7. <input checked="" type="checkbox"/> For purposes of Appeal, the proposed amendment(s) a)<input type="checkbox"/> will not be entered or b)<input checked="" type="checkbox"/> will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.</p> | | |
| <p>The status of the claim(s) is (or will be) as follows:</p> | | |
| <p>Claim(s) allowed: _____.</p> | | |
| <p>Claim(s) objected to: _____.</p> | | |
| <p>Claim(s) rejected: <u>21-27</u>.</p> | | |
| <p>Claim(s) withdrawn from consideration: _____.</p> | | |
| <p>8. <input type="checkbox"/> The drawing correction filed on _____ is a)<input type="checkbox"/> approved or b)<input type="checkbox"/> disapproved by the Examiner.</p> | | |
| <p>9. <input type="checkbox"/> Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.</p> | | |
| <p>10. <input type="checkbox"/> Other: _____.</p> | | |

Continuation of 5. does NOT place the application in condition for allowance because: The applicant argues that because the Board of Appeals has overturned a similar rejection, this rejection should also be withdrawn. However, the Board of Appeals did not consider the merits in this case and therefore, the Board's decision does not apply to this rejection. Further, the applicant argues that the examiner said that the fact that the border's in Sherrill et al. are printed is irrelevant. This statement is not true. The argument in the previous Office Action states that the printed border would have the same structure as a dyed border, i.e., a border region which is a different color from the center region. Additionally, the rejection does not rely only on the teachings of Sherrill et al. Instead, the rejection is based on a combination of Sherrill et al. and the Applicant's admission. The combination of the two references establishes that it would have been obvious to one of ordinary skill in the art to modify the towel design so that the towel has a different color border on both sides of the towel and a printed image in the central region of the towel. The Applicant has not addressed the rejection as a whole. Therefore, the rejections are maintained.

(S)
10-B
04



CHERYL A. JUSKA
PRIMARY EXAMINER